

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
OCTOBER 10, 2018**

CALL TO ORDER
6:00 pm

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at the 2nd floor conference room of the Earl Bennett Building, 1035 First Ave West, Kalispell, Montana. Board members present were Jeff Larsen, Greg Stevens, Sandra Nogal, Mike Horn, Dean Sirucek, Ron Schlegel, and James Thompson. Kevin Lake had an excused absence. Mark Mussman, Rachel Ezell, and Donna Valade represented the Flathead County Planning & Zoning Office.

There were 13 members of the public in attendance.

**APPROVAL OF
MEETING
MINUTES**
6:00 pm

Sirucek made a motion, seconded by Schlegel, to approve the September 12, 2018 meeting minutes.

Motion carried by roll call.

**PUBLIC
COMMENT**
*(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)
6:02 pm*

Forest Nelson, 264 El Rancho Rd., brought up the discussion of the consolidation of agricultural zones being tabled and felt the subject should be dropped all together. He said there was no correlation between the compliance of all the zones and size of lots. He said it did not make any sense and was all over the board. He said most zones were not compliant. He addressed a comment brought up at the last meeting regarding manufactured homes and pointed out the definition differed between state, HUD, and the county and felt it was worth addressing which definition they should use. He also brought up exclusionary zoning and said there were still forms of it in the Flathead County Zoning Regulations; specifically being that if you have a certain type of lot size you then had to have a certain type of home. He felt like they were encouraging the building of slums by allowing manufactured homes on small lots and there should be a building code to regulate quality. He felt smaller lot sizes should have quality homes built on them. He also addressed issues of multiple principle uses. He said the definition of principle use was very vague and discussed in great details what he found to be discrepancies. He stated that he felt regulations needed to be clean cut and there should be no room for subjective interpretations.

Mayre Flowers with CommUnity Consulting, LLC. addressed the zoning text amendments and encouraged them to open up public comment for the agenda item and allow additional discussion. She had submitted written comments earlier in the day and had concerns with items being changed like multiple principle uses, high intensity recreational uses, etc.

**THOMAS
BOYDSTON
(FZC-18-15)**
6:11 pm

A zone change request from Sands Surveying on behalf of Thomas J. Boydston for property located at 454 Addison Square near Kalispell, MT in the Evergreen Zoning District. The proposal would change the zoning on a parcel containing approximately 10 acres from SAG-10 (Suburban Agricultural to R-1 (Suburban Residential)).

STAFF REPORT
6:12 pm

Donna Valade reviewed staff report FZC-18-15 for the board.

**BOARD
QUESTIONS**
6:14 pm

None

**APPLICANT
PRESENTATION**
6:14 pm

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicant as the consultant. He reiterated that the reason for the zone change was because the applicant had been approached by two of his neighbors to buy the land. He said there were multiple properties that were SAG-10 but were 1 acre in size. He concurred with the staff report. The applicant was also available for questions if needed. He brought up that there was floodplain in the middle of this so it would not be maxed out and stated that there might be 4 lots able to be made out.

**BOARD
QUESTIONS**
6:16 pm

None

**AGENCY
COMMENTS**
6:16 pm

None were present but Valade reviewed the written public agency comments given.

**PUBLIC
COMMENT**
6:17 pm

None

**APPLICANT
REBUTTAL/
COMMENTS**
6:17 pm

None

**STAFF
REBUTTAL/
COMMENTS**
6:17 pm

None

**MAIN MOTION
TO ADOPT F.O.F.
(FZC-18-15)
6:18 pm**

Stevens made a motion, seconded by Sirucek, to adopt staff report FZC-18-15 as read by Valade as findings of fact.

**BOARD
DISCUSSION
6:18 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
(FZC-18-15)
6:18 pm**

Motion was passed on a roll call vote.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FZC-18-15)
6:18 pm**

Nogal made a motion, seconded by Sirucek, to recommended approval of FZC-18-15 to the Board of County Commissioners.

**BOARD
DISCUSSION
6:19 pm**

None

**ROLL CALL TO
RECOMMEND
APPROVAL
(FZC-18-15)
6:20 pm**

The motion passed unanimously on a roll call vote.

**FOX HILLS
ESTATES
PHASE 3
(FPP-18-08)
6:20 pm**

A request from Terry and Mark Leighty for preliminary plat approval of Fox Hills Estates Phase 3 Subdivision, a proposal to create 8 residential lots on 12.57 acres. Each lot would be served by community water and sewer systems.

**STAFF REPORT
6:21 pm**

Rachel Ezell reviewed staff report FPP-18-08 for the board.

**BOARD
QUESTIONS
6:25 pm**

Larsen asked that she explain the COSA. She explained that it was an old COSA from 2006 and the approval had expired. She also explained that it was clear they were trying to resolve the issues. Larsen said they would essentially have to go through DEQ as a condition and Rachel said that was standard for approval.

**APPLICANT
PRESENTATION
6:27 pm**

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicants as the engineer. He said, as staff eluded, the project had been through a number of approvals over the years. All the phases had been built except this phase, which was affected by the downturn of 2008. He discussed the approaches, drainage systems, parkland, and sewer and how they were all in place. He said when they had reapplied for phase three, there were a number of issues that came up. He said in the last two years, they have hired a new engineer that had secured the water rights, upgraded the water system, added a chlorinator to the system and the sewer system had always been in place. He said there were a number of lots that were utilizing the water systems. All of the problems had been rectified with the exception of the last issue. He said that ultimately, the COSA was a standard of subdivision approval and they were prepared to do that again as everything was in place. He believed that they could resolve the final issue easily. He said, in regards to the Fish Wildlife and Parks comments, they had a wetlands hydrologist go out to identify the wetlands and Marc Pittman, of the DNRC, go out to identify high water elevation. They had suitable building lots at this time and did not foresee any issues. He mentioned there was a condition placed of no basements allowed due to high ground water. He said the water was sometimes present and sometimes was not. He believed the conditions would carry through to the final plat.

**BOARD
QUESTIONS
6:33 pm**

Sirucek said he had brought up the concern of basements in the subdivision a couple of years ago. There was discussion between Sirucek and Mulcahy over the elevation of the stream and the building elevation. Sirucek pointed out that there was probably close to 8 to 9 feet difference between the elevation of the building lopes and the stream lopes. Mulcahy said that the condition with no basements would satisfy the concern.

**AGENCY
COMMENTS
6:35 pm**

No agencies were present to comment. Ezell reviewed the written comments from agencies to the board.

**PUBLIC
COMMENT
6:35 pm**

None

**APPLICANT
REBUTTAL/
COMMENTS
6:36 pm**

None

**STAFF
REBUTTAL/
COMMENTS
6:36 pm**

None

**MAIN MOTION
TO ADOPT F.O.F.
(FPP-18-08)
6:36 pm**

Schlegel made a motion, seconded by Nogal, to adopt staff report FPP-18-08 as findings of fact.

**BOARD
DISCUSSION
6:00 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
(FPP-18-08)
6:36 pm**

Motion was passed unanimously on a roll call vote.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FPP-18-08)
6:37 pm**

Schlegel made a motion, seconded by Nogal, to recommended approval of FPP-18-08 to the Board of County Commissioners.

**BOARD
DISCUSSION
6:37 pm**

Sirucek said, based on the changes, he was in favor of resending condition #19. He wanted the future owners to be informed that there was a forced water shed above that and if the area had a fire and burned, there would be about a 30-35% increase of flow in that stream. He felt that the plan had been modified to take care of what the water looked like now but wanted to make it clear that it could change in the future.

**MOTION TO
STRIKE
CONDITION #19
6:39 pm**

Sirucek motioned, seconded by Stevens, to strike condition #19 from the staff report.

**BOARD
DISCUSSION
6:39 pm**

Nogal asked for clarity as to why it needed to be changed. Sirucek explained that because of the ground water issue, he felt that there should be some type of warning to the future home owner that there might be an issue with the ground water, especially for those who want to build a basement.

**ROLL CALL TO
STRIKE
CONDITION #19
6:40 pm**

Motion was passed unanimously on a roll call vote.

**BOARD
DISCUSSION**
6:41 pm

None

**ROLL CALL TO
RECOMMEND
APPROVAL
(FPP-18-08)**
6:41 pm

The motion passed unanimously on a roll call vote.

**ZONING TEXT
AMMENDMENTS
(FZTA-18-02)**
6:42 pm

A request by the Flathead County Planning Board for multiple amendments to the Flathead County Zoning Regulations. The character of many of the purposed amendments can generally be described as ensuing consistency in language throughout the regulations and to rearrange the placement of use districts in a more logical order. More significant amendments include, but are not necessarily limited to: eliminating zoning use districts from the regulations, renaming other zoning use districts, complete revision of the sign regulations, and adding and deleting definitions.

**BOARD
DISCUSSION**
6:42 pm

The Board discussed the process of the public hearing and public comments and whether or not they should reopen it or not. Larsen confirmed with staff that there had been two public hearings regarding the zoning text amendments and the public hearing had been closed. Mussman said he believed it had been closed and Nelson spoke up and said that the website had been updated to state the public hearing portion was closed. Mussman said they had received additional comments regarding this particular topic. He said there were adjustments made as a result of last meeting's comments. He said the board could make a determination on whether or not they wanted it to be opened up for further comments. Mussman said they had received written comments and those would be forwarded to the Commissioners. There will be another public hearing with the County Commissioners after a recommendation had been forwarded.

Larsen wanted clarified that if they did not open up the public hearing again, that the written comments received could not be taken into account. Mussman said that at some point in time they could be taken into account and *would* be taken in to account at the Commissioner's hearing. Mussman did encourage the Board that it never hurt to have too much public comment. He said it was ultimately the board's decision.

Larsen asked the board and each member replied whether or not they wanted to open the public hearing again. It was ultimately decided that two public hearings were more than fair and they would keep the public hearing portion closed.

STAFF REPORT
6:47 pm

Mussman reviewed things that they had gone over last month. He reviewed the maps that showed where short term rentals were permitted uses in the BR-4, BMRR, BMV (by Big Mountain) and CDR (in Bigfork) zonings. They were referred to as resort dwellings in those zones. As a result of previous comments, not only were they modifying the definition of dwelling resort but adding short term rentals as a permitted use in the BR-4, BMRR, and BMV and the CDR.

He said, as a result from comments last month, they were proposing to make caretaker facility as a permitted use and not a conditional use in zones AG-80, AG-40, AG-20, and SAG-10 zones. Currently there were similar uses allowed but a caretaker facility was an administrative conditional use (FACU) in the mentioned zones. The example given was that ranch employee housing was a permitted use but caretaker facility was only allowed with a FACU permit.

He addressed the similarities between bed and breakfasts and short term rental housings. He said bed and breakfasts were conditional uses and it had been requested that they be an administrative conditional use. In addition, he wanted to change the definition to eliminate the word "breakfast" with meals.

In response to comments from the last hearing, they had revised the definition of hotel/motel to capture more of what was seen now and to eliminate the antiquated definition.

Sirucek asked Mussman to address the Whitefish City comment received. Mussman said that it had been brought to his attention, late in the day, that the City of Whitefish had recently made changes to the Whitefish zones that had allowed short term rentals but now did not. He explained that one of the said zones was the WB-2, which the county had structured the B-2A zone as being as compatible as possible to the WB-2 zone. Sirucek asked where the WB-2 zones were located. Mussman pointed out the B-2A zones on the map. He reiterated it was as compatible as possible with the City of Whitefish Zoning regulations. Sirucek pointed out that there was a very small border of zones (between County and City of Whitefish) that may be a conflict and felt that the comment was somewhat overstated. Mussman pointed out that the proposal also included a modification of the definition of B-2A zone plus renaming it, to eliminate the references to the City of Whitefish. It could be a zoning district that could be used in other areas of the county.

Schlegel felt that the County had bent over backwards to try and be as close to the City of Whitefish as they could. He did not feel like it was right to have to keep changing regulations to keep up with Whitefish because they had changed theirs again.

Stevens called point of order. He pointed out that public hearing had been closed and wondered why they could even take in to consideration written

comments received after public hearing had closed. He felt it was a disservice to anybody who wanted to testify in a different manner. He felt it was a disservice to the rest of the people who have been told that the public hearing was closed but they continue to take testimony from other people. He wondered if they could even consider it.

Mussman said he considered the comment to be an agency comment.

Horn said any agency, after the County Commissioners make their decision, could come along and change things that were in contravention of what was assumed at the time the hearing was closed.

Mussman said he would consider the comment differently than just a general public comment. Stevens said it had already been discussed therefore was already in the record.

Mussman said that it was a very small area of undeveloped property on the east side of HWY 93 and both sides HWY 40. He pointed out the small area that actually could be approved for a short term rental. He argued that the county was in fact crafting, as nearly as possible, compatibility with the City of Whitefish.

Nogal said the City of Whitefish had to modify due to being boxed in by the transient VRBO. It had taken a significant amount of rental properties away from the work force that were actually affordable. She did not want to get pulled into the idea that the County had to follow suit every time the City of Whitefish changed something that was not in their best interest. She said the County had done everything they could [to be compatible].

Mussman moved on and addressed restoring the airport overlay. The initial reason why it had been proposed to be eliminated was because it strictly dealt with the Kalispell City Airport. Upon close further review, it never specifically referenced the city airport. Glacier International Airport was wrapping up a new master plan and felt it was important to keep the Airport Overlay in the regulations because it was important to protect Glacier International Airport. There were some land uses that were not compatible in or around airport areas. Ultimately he would like to have it looked at, especially as they looked at growth policies. The area around the airport needed to be protected. The airport provided some economic vitality. He pointed out that, right now, the airport was surrounded on three sides by unzoned property. He recalled that in the late 90's there was a push to zone that area but it had not worked.

He also discussed eliminating the West Valley Overlay. He pointed out that much of what had originally been a part of the West Valley Overlay had been annexed in to the City of Kalispell. The remaining bits of the overlay will be

eventually annexed in and he believed that it will be a thing of the past.

As a result of public comment regarding the B-2, and further investigation of the permitted and conditional uses in the B-2 and B-3 zones, the new revised exhibit A proposed to add dwelling duplex, multifamily, and dwelling resort as permitted uses. In the B-3 zone, hotels and motels were permitted uses which were transitory in nature but still had a semblance of residential living (albeit on a short term basis). In addition the B-3 zone, as a conditional use, allowed duplex and multifamily units and resort dwellings. The B-2 zone currently had only hotel and motels available. He felt it was important to address because there was a lot of B-2 in the non-developed and underdeveloped area. Because the area had a lot of municipal services, it could be an effort to address some affordable housing issues. Typically you can develop affordable housing with density and with the municipal services you could get the density.

Those were the major revisions that were suggested as a result of last month's comments. He also reminded the board that the consolidation of the agricultural zones had been eliminated for consideration at this time. He reminded them that they hadn't changed anything on the sign regulations. Most of the sign regulation amendments, including the scenic corridor, eliminated any references to the content on the sign in response to the supreme court decision in Arizona deeming that signage was supposed to be content neutral. They could regulate the size and placement of the sign only.

**BOARD
QUESTIONS**
7:10 pm

Stevens brought up the state definition of manufactured homes. He rebutted the public comment made earlier suggesting that manufactured homes were of low quality. He had professional experience as an appraiser, inspecting high and low end homes, and testified that he had seen evidence of poor quality on stick built homes during the boom times. He brought up the fact that manufactured homes were built in controlled temperature, (unlike homes in Montana), went through inspection protocol, and quality control. These were things that were not necessarily regulated on homes built here in the county and he felt that some of the manufactured homes may, in fact, be better quality than some of the stuff built in the rain and the snow. He disagreed with the thinking that manufactured homes were lower quality when compared to stick built homes. He asked Mussman if he had given any thought to allowing manufactured homes that fell under the state definition to be allowed as either a permitted or a conditional use.

Mussman said he had a problem with the state definition and found it to be problematic. He said that all zones that allowed single family dwellings as a permitted use, also allowed class A manufactured home. He read the definition of Class A Manufactured homes. As defined by the county, it only has to be skirted and not on a permanent foundation as defined by the state. He read the class B and class C definition. He felt that incorporating the

definition may be problematic due to the permanent foundation portion of it. Mussman said he had a problem with the fact that somebody could build something much smaller than regulated. He felt like it was a complex issue.

Sirucek asked to clarify what Mussman had proposed to change in regards to manufactured homes. He said he had not changed anything.

Stevens said there was a presumption that a manufactured home did not lower property values of surrounding homes. That presumption was in state law but was a rebuttable presumption if presented with evidence. In the issue of a variance, there was not a presumption of state law that a manufactured home did not lower property values of surrounding homes. He did not know how our regulations dealt with those type of issues.

Mussman said that they considered trying to get a class B manufactured home in a zoning district that did not allow class B as a variance of use. Mussman said there was not a process for a variance of use. One could appeal to the Board of Adjustment with a written determination that a class B manufactured home in a zone, that only allowed class A, would be a use and not a bulk and dimensional requirement. He had no feelings when it came to his decisions getting upheld or reversed.

Mussman then addressed how the board could continue the process the recommendations and possibly give some recommendations.

7:24 pm

Sirucek discussed minimum lot size definitions and suggested an amendment to the definition.

Sirucek also questioned Section 3.24 regarding the consideration of a storage unit being the same as a warehouse. He wondered if that was a typical standard use. Mussman said that the original BSD, which was approved by the City of Whitefish, had storage units. Sirucek wondered if that needed to be added. Mussman said that mini storage was a conditional use. Sirucek suggested that it be amended. Mussman said that typical uses outlined briefly permitted uses. Sirucek suggested that a storage unit be a permitted use. Sirucek pointed out that it may be a conditional use but it was being redefined and most of the ones he knew of had storage units on them. Mussman said that he could think of two pieces of property that were zoned BSD, that had been approved by the City of Whitefish, and the other had been a use prior to zoning. Sirucek asked if he saw his point. Mussman said that he could but the BSD outlines that one could have fairly large multiple uses in the business service district and was designed to cluster those uses to combine parking. Anything new that wanted to be BSD had more of a cluster look than a strip look. Multiple tenants could be allowed. Sirucek said he just thought it was more of a standard thing that was happening in that district. Mussman said that it occurred a couple of times and there weren't many acres zoned BSD.

Sirucek asked about 7.04.01 in the signage; it seemed to him that there were a lot of properties in unzoned areas that exceeded the regulations. He wondered if those would be grandfathered in and Mussman said they would be. Mussman clarified that the portion they were talking about were exempt signs. They could have one temporary sign. Sirucek wondered if that was different for a standard sign. Mussman said it would be different. Sirucek said when he read it, he thought of a lot of the non-conforming signs that were out there (especially along Hwy 93). Mussman said that currently, there were not any provisions for temporary signs. His interpretation of temporary sign was that there was no legal non-conforming status of a sign because it would be temporary. He gave examples of situations that might become a violation.

Sirucek said he was going to propose an amendment. He had gone back and looked at the nonconformity issue with some of the larger AG lots. He said there were a lot of townships where there was a portion along the edge of a township that had short sections. He said it was an example of where the world has turned from square to spherical. The other issue he felt they had was being within a distance of a county road. He gave data that backed up the fact that occasionally there were acreages that were seemingly smaller due to county road easements. He wanted there to be a 4-5% reduction in minimum acreage to stay in "that class". He felt it was pretty reasonable because of the right of way question. There were two or three townships in the county where this had happened. In his mind, he wouldn't change the name, but address the definition where the minimum lot size acreage would be 76 acres in an AG-80 (and so on). That gave them a 5% allowance to be in conformity for those zones. He felt that 2/3 of compliance problems had to do with road right of way questions and not ownership questions.

Horn said that on his family farm, some of the property extended out to the center line of a road but in many cases the county was given the deed to the right of way. Sirucek said that the definition of minimum lot size wanted to be discussed and possibly changed. He felt the chart that would be developed would change with that.

Stevens brought up that the only time it came into question was in subdivision. He questioned if it was a more appropriate question for the subdivision regulations.

Sirucek said that there had been three or four zone changes in the last few years where the property in question was zoned AG-20 that was actually 19.9 acres and had to go to SAG-5 to subdivide.

Larsen said he liked where this was going but thought it might be simpler to call it an aliquot part. He was concerned that they were forcing zone changes because they could not define a zone.

Mussman said some of those issues were resolved with the definition of lot area, which in many cases included the center of the road. He said a lot of the issues were resolved. He did not know how to resolve some of the short sections and short townships. They continued to discuss in great length at how they could approach situations that arose by forcing smaller zoning because of surveying.

Larsen suggested that if they had an aliquot part, then it could comply with zoning. Larsen said it would be easier than taking exact acreages. Mussman said boundary line adjustments could also be acquired. Stevens said you couldn't do that either in a zoned district that it would affect the adjoining property owner's acreage. Mussman said that based on the comments here last month, people might want to protect the large zones. Mussman said that there was a method that other jurisdictions had addressed them by using a percentage such as 95% or they could go through an administrative variance process if they were within the 95% of a certain bulk and dimensional requirement.

Larsen and Sirucek expressed that they both liked that idea. Mussman said that he had considered adding that in but there were already some complex changes to be considered. He said he would be inclined to put it somewhere such as chapter 2, outlining administrative variances. Sirucek requested that the director draft something and when the board dealt with the AG zoning, it could be discussed further at that point. It was agreed upon by the board that it could be addressed at that time. Mussman further discussed that they could consider it with the administrative variances (i.e. setbacks).

Larsen questioned if Mussman had put any thought into the flag lot definitions. Mussman said that he had; there were a lot of different definitions of flag lots and none of them were very good. Larsen said the definition was a little confusing. Mussman believed that everyone knew what a flag lot was and suggested adding a diagram to the definition to further explain it. He further discussed the definition of flag lots. Larsen wondered why they were only allowed in residential zones. Mussman answered that they were permitted in residential zones and one could obtain it through a variance in AG and SAG zones. Larsen wondered why they were only permitted in residential zones. Mussman replied that with the larger lot sizes, you are able to have some road frontage and not create a flag lot. There was further discussion on the definition of a flag lot.

Larsen asked the board what they wanted to do. Sirucek said he was in favor of forwarding a positive recommendation to the County Commissioners.

**MAIN MOTION
TO ADOPT F.O.F.**

Sirucek made a motion, seconded by Horn, to adopt staff report FZTA-18-02 as findings of fact.

(FZTA-18-02)

8:02 pm

**BOARD
DISCUSSION**

8:02 pm

None

**ROLL CALL TO
ADOPT F.O.F.**

(FZTA-18-02)

8:02 pm

Motion passed unanimously on a roll call vote. .

**MOTION TO
RECOMMEND
APPROVAL**

(FZTA-18-02)

8:02 pm

Sirucek made a motion, seconded by Stevens, to recommended approval of FZTA-18-02 to the Board of County Commissioners.

**BOARD
DISCUSSION**

8:03 pm

Stevens mentioned he had thought about putting in an amendment to acknowledge the state definition of manufactured homes but decided against it due to the hard work the director had put into the recommendations.

**ROLL CALL TO
RECOMMEND
APPROVAL**

(FZTA-18-02)

8:03 pm

The motion passed unanimously on a roll call vote.

OLD BUSINESS

8:04 pm

None

NEW BUSINESS

8:04 pm

Mussman informed the board that a staff attorney from MACO would be in town to do a board training on October 24, 2018 from 5 pm – 8 pm.

**MEETING
ADJOURNED**

6:00 pm

The meeting was adjourned on a motion by Nogal and Schlegel at approximately 8:06 pm. The next meeting will be held November 14, 2018 pm.


Jeff Larsen, Chairman


Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 11 / 14 /18